

IN THE UNITED STATES DISTRICT COURT FOR THE  
WESTERN DISTRICT OF OKLAHOMA

|                                |   |                       |
|--------------------------------|---|-----------------------|
| ELGRET BURDEX,                 | ) |                       |
|                                | ) |                       |
| Plaintiff,                     | ) |                       |
|                                | ) |                       |
| v.                             | ) | Case No. CIV-18-693-D |
|                                | ) |                       |
| PHILLIP SMITH, <i>et al.</i> , | ) |                       |
|                                | ) |                       |
| Defendants.                    | ) |                       |

**ORDER**

This matter is before the Court for review of the Report and Recommendation issued by United States Magistrate Judge Suzanne Mitchell pursuant to 28 U.S.C. § 636(b)(1)(B) and (C). Judge Mitchell recommends the dismissal of this action without prejudice under Fed. R. Civ. P. 41(b) due to Plaintiff's failure to pay the initial partial filing fee and failure to prosecute his case.

The case file shows no timely objection to the Report nor request for an extension of time, even though Plaintiff was expressly informed of his right to object, the procedure for doing so, and the consequences of failing to object.<sup>1</sup> Therefore, the Court finds that Plaintiff has waived further review of all issues addressed in the Report. *See Moore v. United States*, 950 F.2d 656, 659 (10th Cir. 1991); *see also United States v. 2121 E. 30th*

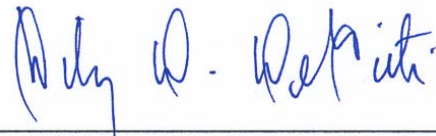
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<sup>1</sup> Although the case file reflects a return of mail containing Plaintiff's copy of the Report and Recommendation, it is Plaintiff's obligation to provide written notice of a change of address. "Papers sent by the court will be deemed delivered if sent to the last known address given to the court." LCvR5.4(a).

*St.*, 73 F.3d 1057, 1060 (10th Cir. 1996). Further, for the reasons explained by Judge Mitchell, the Court finds that this action should be dismissed without prejudice to refileing.

IT IS THEREFORE ORDERED that the Report and Recommendation [Doc. No. 12] is ADOPTED in its entirety. This action is DISMISSED without prejudice to a future filing. A separate judgment of dismissal shall be entered.

IT IS SO ORDERED this 22<sup>nd</sup> day of October, 2018.



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TIMOTHY D. DEGIUSTI  
UNITED STATES DISTRICT JUDGE